

ASSEMBLY BILL

No. 1603

Introduced by Assembly Member Solorio

January 5, 2010

An act to add Section 4655.5 to the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1603, as introduced, Solorio. Workers' compensation: temporary partial disability.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, that generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, and in the course of, employment. Existing law provides certain methods for determining workers' compensation benefits payable to a worker or his or her dependents for purposes of temporary total disability, temporary partial disability, permanent total disability, permanent partial disability, and in case of death.

Existing case law provides that temporary disability payments cease when: (1) the employee returns to work, (2) the employee is deemed medically able to return to work, or (3) the employee's medical condition becomes permanent and stationary.

This bill would require that an employee be deemed to be temporarily partially disabled during the period when the employee's disability is permanent and stationary, no more than 60 days have elapsed after the date the employee was informed that his or her disability is permanent and stationary, the employer has not offered the employee regular,

modified, or alternative work, and the employer has not informed the employee that it will not offer the employee regular, modified, or alternative work.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) An injured employee should not be deprived of both earnings
4 and disability benefits when the employee has recovered from the
5 disability, but the employer delays the return to work for any
6 reason, including, but not limited to, requiring an additional
7 medical opinion to clear the employee for return to work.

8 (2) An employee continues to experience the effects of
9 temporary disability until the employee is informed that he or she
10 is medically able to return to work in some capacity and the
11 employee is informed whether the employer will accommodate
12 the disability.

13 (b) It is the intent of the Legislature in this act to extend
14 eligibility for temporary disability benefits for a limited period
15 when an employee's disability benefits end upon receiving a
16 doctor's release to return to work, but the employee is neither
17 immediately permitted to return to work nor informed that work
18 will not be available to the employee.

19 SEC. 2. Section 4655.5 is added to the Labor Code, to read:

20 4655.5. (a) An employee shall be deemed to be temporarily
21 partially disabled during the period when all of the following
22 conditions exist:

23 (1) The employee's disability is permanent and stationary.

24 (2) No more than 60 days have elapsed after the date the
25 employee was informed that his or her disability is permanent and
26 stationary.

27 (3) The employer has not offered the employee regular work,
28 modified work, or alternative work.

29 (4) The employer has not informed the employee that the
30 employer will not offer the employee regular work, modified work,
31 or alternative work.

1 (b) For purposes of implementing subdivision (a), all of the
2 following shall apply:

3 (1) The effective date of an offer of work shall be the first day
4 the employee would be working if the offer is accepted by the
5 employee immediately upon receipt of the offer.

6 (2) The date an employee is informed that the disability is
7 permanent and stationary, or the date the employee is informed
8 that the employer will not offer the employee regular work,
9 modified work, or alternative work, shall be the earlier of the date
10 the employee is actually so informed or five days after the date
11 notice so informing the employee is mailed to the employee at his
12 or her last known address.

13 (3) The weekly loss of wages shall be determined as provided
14 in Section 4657, except that it shall not be computed from the
15 proportionate loss of physical ability or earning power caused by
16 the injury.